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SUBJECT: Mongolia Customs

¶1. Summary: While there is a bilateral Customs agreement with the U.S., cooperation has waned since the end of the Multifiber Arrangement in 2005. Mongolia has a relatively liberal trade regime, with low tariffs and no quotas or onerous licensing requirements. Customs is widely viewed as corrupt, an impression bolstered by the recent conviction of the former head and other officials. Customs processing is now largely antiquated and paper-based, but a new ADB-funded program looks to change that. Mongolian Customs currently hesitates to seize IPR-infringing products. End summary.

U.S.-Mongolia Customs Mutual Assistance Agreement

¶2. Mongolia and the U.S. signed a bilateral Customs Mutual Assistance Agreement in 1996. The agreement allows for the exchange of information, intelligence, and documents that will ultimately assist both countries in the prevention and investigation of customs offenses.

¶3. In the heyday of the Multifiber Arrangement, Mongolian-U.S. Customs cooperation through the Beijing office was quite active in exchanging information, monitoring rules-of-origin issues on transshipments, and regular visits of a U.S. Customs representative from Beijing. Since the MFA's expiration in January 2005, however, interaction has waned. Working with our Mongolian counterparts, we hope to use the 2007 TIFA talks as a springboard to reinvigorating our customs bilateral relationship and look forward to exchanging ideas on how this can be achieved.

¶4. As part of our efforts at broadening cooperation with Mongolian Customs in the spirit of the CMAA, post sponsored a week of enforcement training in June 2006 supported by an INL grant with trainers supplied by DHS/CBP's IPR Enforcement Division and USPTO. The training helped USG develop a clearer understanding of Mongolian Customs' approach to handling IPR cases. In addition, PTO supported attendance of two Mongolian officials from IPOM and Customs respectively to attend the APEC IPR event in Los Angeles, California.

Mongolian Customs: Basic Facts

¶5. Mongolian Customs is a government agency under the Ministry of Finance responsible for administration of customs legislation, overall control on imports, exports, assessment and collection of customs duties and VAT, excise duties upon importation, compilation of customs statistics and combating customs offences. The basic laws governing the customs activities are the Customs law and Customs tariff law, which entered into force in 1996. The Spring

2007 session of the State Great Hural is scheduled to consider unspecified revisions to these laws.

¶6. Mongolia joined the World Customs Organization in 1991. At present Mongolia is a contracting party to WCO Conventions such as Convention Establishing Customs Cooperation Council, Convention on Harmonized Commodity Description and Coding System, Istanbul Convention on Temporary Admission, and Convention on Simplification and Harmonization of Customs Procedures. Mongolia is preparing to accede to the Convention on Mutual Administrative Assistance in Customs Matters.

¶7. According to Mongolian Customs, the country counts 41 ports of entry along its 4606 miles of land borders -- 29 on the Russian border and 12 on the Chinese. However, besides being remote, all but two of these operate on a seasonal basis only and their traffic is limited to Russian/Chinese/Mongolian nationals and small time "suitcase" traders. There are only two recognized "major" border crossings, at Zamiin Uud in the south and Sukhbaatar in the north, where the railroad crosses the borders. In addition there are two international airports, Ulaanbaatar's Chinggis Khan International Airport and another in the western province of Bayan-Olgii, which serves mostly Kazakhstan. Mongolia's one railway line runs north south between Sukhbaatar and Zamiin Uud via the capital. There is a paved road that leads to the Sukhbaatar crossing, but a road leading to Zamiin Uud is still under construction.

¶8. Mongolia serves as a transit link for the sizable trade between the People's Republic of China and the Russian Federation. In 2004, the Mongolian railway funneled some 4.5 million tons of transit freight, mainly between Russia and China. In 2005, trade turnover between China and Russia equaled US \$29.1 billion, with Mongolia serving as a conduit for much of it. Mongolia's foreign trade

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turnover reached \$2.2 billion in 2005, up from \$1.2 billion in 2000, averaging a 18.3% increase year over year. 2005 total trade turnover with the U.S. equaled \$162.9 million; \$118.8 million in Mongolian exports to U.S. and \$44.1 million in exports to Mongolia. Mongolia's major trading partners are China (33% of total), Russia (19%), and the United States (11%).

¶9. In addition to the U.S., Mongolian Customs has concluded intergovernmental agreements and memorandum on mutual assistance and cooperation in customs matters with Russia, China, Republic of Korea, Hungary, Poland, Great Britain, Kazakhstan, Czech Republic, Bulgaria, Turkey, Vietnam, Ukraine and Kyrgyzstan.

Customs duty

¶10. Mongolian Customs collects import and export duties and other taxes according to the tariff schedule with referred HS codes. The customs value of imported merchandise is determined according to the methods provided for in the WTO Valuation Agreement.

-- Import Duty: Mongolia imposes a 5 percent across-the-board customs import duty. Such goods as pedigreed animals, computers and their parts, medical and veterinary equipment have zero rate Customs duty. Imported wheat flour and vegetables have seasonal tariff rates.

-- Excise tax: According to the 2006 tax laws, the following imported goods are subject to excise tax at the respective specific rates:

- passenger cars: USD 500-4000 depending on their year of manufacturing (up from 500-2000 under previous tax regime);
- beer: USD 0.20 per liter;
- vodka, liquors and other spirituous beverages depending on alcoholic strength: USD 5.00 to 6.00 per liter;
- wines: USD 1.50 to 6.00 per liter depending on strength;
- cigarettes and the like: USD 0.60 per 100 pieces
- smoking tobacco and like: USD 0.30 per kg;
- petroleum and diesel oil: USD 11-48 depending on its octane level and port of entry.

-- The 2006 law also creates high tax rates for gaming devices

-- Petroleum and Diesel Oil Tax: Petroleum and diesel oil tax of 2140-25700 MNT is imposed on imported petroleum products depending on their level of octane. The petroleum tax should be collected within 30 days after importation.

- Value Added Tax (VAT): Tax reforms effective on January 1, 2007 reduced Value Added Taxes imposed on goods and services from 15% to 10%.

-- Export Customs duty: Camel wool, unprocessed cashmere, goat skin waste and scrap of iron or steel aluminum, copper, brass, waste of rails, wood in logs, in the rough, wood sawn or chipped lengthwise are subject to export Customs duty. Obligations under WTO would require Mongolia to phase out export duties by this year. However, Mongolia will be requesting a waiver of this obligation and has requested USG support in this effort.

Trade Restrictions

¶11. Mongolia restricts the import and export of certain items. These include:

- Uranium and uranium concentrates
- Poisonous chemicals
- Human blood, organs and blood products
- Firearms and ammunition
- Artifacts and cultural property, including historical, cultural, fossils, archeological and similar items
- Breeding animals, rare species of animals, animal offspring
- Precious metals, precious and semi-precious stones, ore, minerals and rare elements.
- Alcohol

Import Documentation

¶12. Normally, a freight forwarder or Mongolian agent handles documentation requirements. Necessary documents include the contract for import, license for import, cargo manifest, bill of

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lading, transportation invoice, merchandise customs declaration, declaration of merchandise value, proof of insurance, commercial invoice, payment receipt, packing list, certificate of origin, receipt of payment for related duties and taxes, and inspection certificate from the responsible agency (for specific goods). Customs information on the U.S. Embassy website specifies what items require special certificates from various government agencies. There is a lack of consistency within customs in how regulations are applied. Incoming or outgoing shipments are occasionally delayed because of unexpected changes in paperwork requirements.

Pre-Clearance Procedures

¶13. Goods can be cleared before the arrival of the shipment. Clearance is done based on paperwork accompanying the shipment. An entity or individual interested in goods document pre-clearance should apply to a customs clearing agency. Document pre-clearance is done when the goods have left the exporting country. The head of local customs reviews the request and shall issue an order to the chief inspector to carry out document pre-clearance. Pre-clearance is allowed in the following cases:

- Medical and veterinary supplies
- Different types of items in one shipment
- Goods of seasonal quality (wheat and vegetable seeds needed for planting)
- Fragile goods and/or perishable food that require special storage conditions.

Problems with Corruption

¶14. While it is illegal to offer or receive bribes in Mongolia, customs is widely considered the most corrupt government institution. In October 2005, the Customs General Administration's Director General, along with the Chief of one of the south border ports, and three customs inspectors were arrested on charges of accepting bribes. They were convicted in September 2006. Press and the public continue to report cases of bribery and corruption involving mid to high-level customs officials. A high percentage of raw cashmere, wool and skins are smuggled out of the country without paying export duties. Customs inspectors are bribed to look the other way.

¶15. Although post has heard anecdotal evidence that U.S. businesses have had and continue to have problems with Customs, we have not yet received a formal complaint, thus making it difficult for post to approach Customs on issues of corruption affecting American business interests. Mongolians ask that we provide documented cases of abuse when we broach the subject, but we are unable to do so.

Customs System is Antiquated

¶16. The current customs system is operated manually and is labor intensive - i.e., traders must move from one customs processing point to another to seek official stamping and signatures on paperwork. Human intervention in this process causes delays in customs clearance and is vulnerable to corrupt practices. It leads to lack of transparency and to unpredictability.

¶17. The existing capacity of the server and network system is low. Modern customs business processes such as risk management and post-clearance audits cannot be effectively or widely introduced because of the lack of an internet-enabled system and a centralized database.

¶18. Mongolia's customs system will soon be upgraded through a US\$5 million equivalent project loan approved by ADB to improve efficiency, transparency, and sustainability in customs services and administration. The loan will upgrade the system to an internet-based technology and integrate it into a national system for e-government. It will also finance the improvement of the facilities at selected major customs houses and border posts.

Stopping IPR Violations

¶19. Concerning the import of pirated goods, Mongolian officials seem unaware of the importance of intellectual property to Mongolia and of the obligations imposed by TRIPS on member states. Mongolian Customs agents have told us they are hesitant to seize shipments,

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saying that their statutory mandate does not allow seizure of such goods. Mongolian statutory and constitutional law recognizes that international treaty obligations take precedence over local statutes and regulations and the TRIPS agreement provides a legal basis exists for Customs to act, a fact recognized by elements of the Mongolian Judiciary, the Parliament, and the Intellectual Property Office of Mongolia (IPOM). However, Customs lacks a system of trademark registrations that it could use to vet goods entering Mongolia's borders.

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